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Human Rights Committee

Concluding observations on the fifth periodic report of France

Addendum

Information received from France on follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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1. The Human Rights Committee considered the fifth periodic report of France on 10 July 2015.

2. In its concluding observations, issued on 23 July 2015, the Committee called on France (para. 25[1]) to provide, within one year, information on its implementation of **recommendations 11, 12 and 16**.

3. In response to that request, the Committee is invited to refer to the following information:

11. The State party should reconsider the practice of placing persons who have received criminal sentences in post-sentence preventive detention after they have served their sentences owing to their "dangerousness", in the light of its obligations under articles 9, 14 and 15 of the Covenant.

4. Post-sentence preventive detention, which was established by Act No. 2008-174 of 25 February 2008, is a genuine security measure.

5. It consists of placing an individual who has completed his or her sentence in a social-medical-judicial security centre, where he or she is offered ongoing medical, social and psychological care, whose aim is that the measure should be terminated.

6. The measure is exceptional in nature and may be ordered only by an ad hoc court, the regional post-sentence preventive detention court, by reasoned decision and under certain conditions.

7. It may be ordered ab initio and implemented once the convicted person has completed his or her sentence.

8. In such a case, the measure may be ordered only in respect of persons sentenced for offences committed after the entry into force of the Act. The assize court must have expressly provided for such a possibility in its original judgment. The measure may be ordered only under the following conditions:

- Following a multidisciplinary evaluation of an individual's dangerousness, accompanied by a medical report, and upon the proposal of the multidisciplinary commission for security measures;
- If the convicted person has a personality disorder rendering him or her particularly dangerous and highly likely to reoffend;
- If the individual has benefited from appropriate medical, social and psychological care while serving his or her sentence;
- If post-sentence preventive detention constitutes the sole means to prevent the highly likely commission of the offences to which it relates and if the obligations that may be imposed under other measures, such as socio-judicial or judicial surveillance or the automated national register of perpetrators of sexual or violent offences, are insufficient.

9. Post-sentence preventive detention may also be ordered if a convicted person violates the terms of a preventive surveillance measure, thus suggesting that, once again, he or she presents a particular risk and is highly likely to commit one of the offences targeted by the measure. In urgent cases, the individual may be placed provisionally in a social-medical-judicial security centre; that placement must then be upheld by the regional post-

[1] "In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations made by the Committee in paragraphs 11 (Post-sentence preventive detention), 12 (Surveillance activities) and 16 (Sexual abuse in the Central African Republic) above."

sentence preventive detention court, after an opinion has been given by the multidisciplinary commission for preventive measures.

10. In these cases, post-sentence preventive detention is possible even if the individual was sentenced for offences committed before the measure came into force. However, the individual must have had access to appropriate medical, social and psychological care while serving his or her sentence.

11. Post-sentence preventive detention is ordered for a term of one year and is renewable if the convicted person remains dangerous.

12. According to information supplied by the Ministry of Justice, only seven assize court decisions have expressly provided for the re-examination of a convicted person's situation on completion of his or her sentence with a view to possible placement in post-sentence preventive detention. Given the dates on which the seven individuals concerned are expected to complete their sentences, the question of whether the measure will actually be imposed will not arise until 2019.

13. Five individuals have been provisionally placed in a social-medical-judicial security centre after violating the terms of preventive surveillance measures. In four cases, the provisional placement was not upheld by the regional post-sentence preventive detention court, while it was upheld in the fifth case, although the individual concerned was placed back under preventive surveillance following several appeals and proceedings.

14. Although post-sentence preventive detention is strictly regulated, debate currently surrounds its possible abolition.

15. Its abolition was recently recommended by the Inspector General of Places of Deprivation of Liberty in an opinion dated 5 November 2015, by the National Consultative Commission for Human Rights in an opinion dated 27 March 2014 and by a commission established to review the law on criminal sanctions, chaired by Mr. Bruno Cotte (known as the Cotte Commission), in a report submitted to the Minister of Justice in December 2015.

16. The Cotte Commission:

- Considers the legal nature of post-sentence preventive detention to be unclear and questions its compatibility with the European Convention on Human Rights.
- Considers that there are similar measures of a clearer legal nature, such as socio-judicial or judicial surveillance and the automated national register of perpetrators of sexual or violent offences, that fulfil the same purposes and that could, once redefined, replace post-sentence preventive detention.

17. The findings of the Cotte Commission report were published to allow for their wide dissemination.

18. The findings are being carefully considered by Ministry of Justice officials with a view to possible follow-up action in the short and long-term.

19. The current debate on the abolition of post-sentence preventive detention is part of a wider debate on the updating of the classification of penalties and preventive measures proposed by the Commission, which requires an analysis of the system as a whole.

12. The State party should take all necessary steps to guarantee that its surveillance activities within and outside its territory are in conformity with its obligations under the Covenant, in particular article 17. Specifically, measures should be taken to guarantee that any interference in persons' private lives should be in conformity with the principles of legality, proportionality and necessity. The State party should ensure that the collection and use of data on communications take place on the basis of specific and legitimate objectives and that the exact circumstances in

which such interference may be authorized and the categories of persons likely to be placed under surveillance are set out in detail. It should also ensure the effectiveness and independence of a monitoring system for surveillance activities, in particular by making provision for the judiciary to take part in the authorization and monitoring of surveillance measures.

20. France was one of the last Western democracies not to have a coherent and comprehensive legal framework governing the activities of its intelligence services.

21. The Act of 24 July 2015 on intelligence and the Act of 30 November 2015 on the surveillance of international electronic communications,[2] whose key provisions the Constitutional Council judged to be in conformity with the Constitution in two decisions of 23 July 2015 and 26 November 2015,[3] have remedied that shortcoming.

22. These Acts have two main aims:

- To better regulate the activities of the intelligence services by defining clearly and accessibly their missions, the techniques implemented and the authorization procedures, and by strengthening the control of those measures by an independent administrative body and a specialized court.
- To protect French citizens by providing the intelligence services with the means necessary to confront the challenges that France faces.

23. These Acts, whose main provisions are set out in book VIII of the Internal Security Code, entitled "Intelligence", offer many more guarantees than the legal provisions that existed previously.

24. Article L. 801-1 of the Internal Security Code recalls the basic prerequisites to which all intelligence techniques are subject. It provides that "respect for all aspects of private life, including the secrecy of correspondence, the protection of personal data and the inviolability of the home, is guaranteed by law. The public authorities may interfere therewith only where necessary for reasons of public interest as defined by law, within the limits set by the law and with due regard to the principle of proportionality".

25. This article also provides that the authorization and implementation of intelligence-gathering techniques may be approved only if:

- They are decided upon by an authority with the legal competence to do so;
- They are the result of proceedings that comply with the relevant legal provisions;
- They correspond to the missions entrusted to the services authorized to have recourse to them;
- They are justified by the threats, risks and challenges to the fundamental interests of the nation and defined by law;
- Any interference with respect for private life is proportional to the stated aims.

The purposes justifying the implementation of intelligence-gathering techniques by the intelligence services

26. The purposes that may justify the implementation of intelligence-gathering techniques by the intelligence services are precisely defined in article L. 811-3 of the Internal Security Code.

[2] Act No. 2015-912 of 24 July 2015 on intelligence and Act No. 2015-1556 of 30 November 2015 on surveillance of international electronic communications.

[3] Decision No. 2015-713 DC of 23 July 2015 and Decision No. 2015-722 DC of 26 November 2015.

27. The sole purpose of intelligence techniques is to gather intelligence relating to the defence and promotion of the following fundamental interests of the nation:

(a) National independence, territorial integrity and national defence;

(b) Major foreign policy interests, the fulfilment of the European and international commitments of France and the prevention of any form of foreign interference;

(c) The major economic, industrial and scientific interests of France;

(d) The prevention of terrorism;

(e) The prevention of:

(i) Attacks on the republican form of institutions;

(ii) Actions seeking to maintain or reconstitute dissolved groups;

(iii) Collective violence of such nature as to cause a serious breach of public order;

(f) The prevention of crime and organized crime;

(g) The prevention of the proliferation of weapons of mass destruction.

28. By limiting the purposes for which surveillance techniques may be used, legislators responded to the predictability requirement of article 17 of the Covenant and the interpretation of that requirement by the Human Rights Committee in its general comment No. 16, in which it states that "with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted".

The legal definition of intelligence techniques

29. The following techniques are permitted:

- Administrative access to connection data;
- The interception of correspondence sent electronically;
- The sound wiring of certain locations and vehicles and the capturing of electronic images and data;
- The surveillance of international electronic communications.

30. It should be clarified that the law provides for the possibility of authorizing the automated analysis of connection data with the sole objective of combating terrorism, so as to be able to detect online behaviour typical of terrorists. In that connection, users' anonymity is preserved and the content of messages is not monitored (article L. 851-3 of the Internal Security Code). The Prime Minister may only authorize the identification of the person or persons concerned, the gathering of the corresponding data and access by the intelligence services to the data gathered after receiving a further opinion of the National Commission for the Control of Intelligence Techniques, which has ongoing, full and direct access to data-processing systems, and only if the volume of the data collected is limited and coherent.

The implementation of intelligence techniques

31. The implementation of intelligence-gathering techniques is now subject to the prior authorization of the Prime Minister, which is granted after an opinion has been issued by the National Commission for the Control of Intelligence Techniques, a new independent administrative authority.

32. The Commission's independence is reflected in its composition. It is made up of nine members, four of whom are members of Parliament representing both the majority and the opposition, four are judges of the Court of Cassation and the Council of State and one is a technical expert with recognized competence in the area of telecommunications.[4]

33. In addition, several statutory mechanisms have been established to bolster this independence. For example, obstructing the work of the Commission has been made a criminal offence.

34. A statutory whistle-blower mechanism has also been established. Any official of a service authorized to implement intelligence-gathering techniques who, in the course of his or her duties, learns of facts likely to constitute a manifest violation of the legislative provisions relating to intelligence may make them known to the Commission alone, which may then refer the matter to the Council of State and inform the Prime Minister. Under the law, officials may not receive any form of sanction for using this mechanism. Furthermore, when the Commission deems that the reported unlawful action is likely to constitute an offence, it refers the matter to the State prosecutor.

35. In view of the increased powers vested in it and in order to enable it to fulfil its role effectively, the Commission has been allocated more extensive resources than those previously available to the National Commission for the Control of Security Interceptions. The 2016 Budget Act provided for an increase in staff that would enable the Commission to have some 20 employees by the end of 2016; in comparison, the National Commission for the Control of Security Interceptions had just seven employees at the start of 2015. The Commission will also have an operating budget of around €400,000, a considerable increase on the budget allocated to the National Commission for the Control of Security Interceptions.

36. The Commission's control activities are twofold.

37. First, when authorization to implement a measure is requested by a service, the Commission verifies the need for it and its proportionality with regard to the right to respect for private life.

38. The Commission meets in plenary session before rendering its opinion in the following two circumstances:

- To rule on the implementation of an intelligence-gathering technique involving entry into a place of residence;
- To rule on the implementation of an intelligence-gathering technique relating to a person, whether of French or foreign nationality, who has a "protected profession", namely members of Parliament, judges, lawyers and journalists. In this case, the Commission ensures that only data relating to the authorized objective are processed and that data relating to the person's profession or mandate are removed and destroyed.

39. Secondly, when an intelligence technique requiring entry into a private residence is authorized after an unfavourable opinion has been received from the Commission, the matter is immediately referred to the Council of State by the president of the Commission or, failing that, by one of the members of the Commission referred to in article L. 831-1 (2) and (3) of the Internal Security Code. The special formation mentioned in article L. 773-2 of the Code of Administrative Justice, the president of the restricted formation also mentioned in article L. 773-2 or the member delegated by the president issues a ruling within 24 hours of the matter being referred to the Commission. The Prime Minister's

[4] Decree of 1 October 2015 on the composition of the National Commission for the Control of Intelligence Techniques.

decision to authorize the technique may not be executed until the Council of State has made a ruling, unless the authorization has been issued under article L. 811-3 (4) of the Internal Security Code and the Prime Minister has ordered immediate implementation of the technique.

40. In its Decision No. 2015-713 DC of 23 July 2015, the Constitutional Council declared this mechanism to be in accordance with the Constitution. It recalled that the gathering of intelligence by means of the techniques defined in the Act of 24 July 2015 is a matter solely for the administrative police and that its sole purpose must be the preservation of public order and the prevention of crime.

41. These intelligence techniques are available to the administrative police, but not to the judicial police. They are not authorized or implemented under the control of the judicial authorities, but are the sole responsibility of the executive, which must respect the principles of legality, proportionality and necessity.

42. Between its establishment on 3 October 2015 and the beginning of February 2016, the Commission received almost 4,400 notifications. In the same period, all of the Commission's unfavourable opinions regarding the implementation of intelligence techniques were respected by the Prime Minister.

43. Furthermore, the Commission monitors the implementation of the techniques authorized by the Prime Minister, as well as the data collected. To that end, the Commission has direct, ongoing and full access to the tracking tools used in interception and data-processing operations, such as transcripts and extracted data. This monitoring allows the Commission to ensure the adequacy of the techniques implemented in terms of the request made.

44. The Commission may also request all the information necessary for the fulfilment of its tasks.

45. The Commission submits to the Prime Minister all the recommendations that it deems necessary to ensure that the actions of the public authorities comply with the provisions of the law. The Prime Minister is required to respond to those recommendations by reporting on any corrective decisions or actions that he or she has consequently authorized and implemented.

Review mechanisms for intelligence techniques

46. Firstly, legislators have provided for judicial review.

47. The Council of State, sitting in a special formation comprising judges with ex officio national defence clearance, is competent, as a body of first and final instance, to rule on requests to implement intelligence techniques. A specific procedure is applied to these matters.

48. The Council of State is competent to rule on appeals against:

- Decisions relating to the authorization and implementation of these techniques;
- The storage of the intelligence gathered;
- Access to the data involved in some data processing-procedures, including intelligence files.

49. While the procedural rules, particularly those relating to the right to make representations, are adjusted to accommodate requirements relating to the classified nature of information on national defence, the judges' ex officio national defence clearance allows them to access all documents necessary to fulfil their duties and to carry out a full and

unrestricted review of a measure's legality, validity and proportionality, as well as of the data obtained.

50. Its powers are the same as those of a court of full jurisdiction:

- It may raise any issue of its own motion.
- If there is a breach of law, it may revoke the authorization to implement an intelligence-gathering technique and order the destruction of information that was collected unlawfully.
- It may inform the claimant of a breach of law, without disclosing classified defence information.
- It may order the State to provide compensation for the damage suffered.
- When it considers that the illegality found is likely to constitute an offence, it informs the State prosecutor.
- When it detects that a process involves personal data that are inaccurate, incomplete, incorrect or out of date, or whose gathering, use, communication or storage is prohibited, it may order that those data should be corrected, updated or deleted, as necessary.

51. Parliamentary oversight also exists.

52. The Military Planning Act of 18 December 2013 granted Parliament the legal means to establish effective oversight of the Government's activities in the area of intelligence through the Parliamentary Delegation for Intelligence.

53. The Delegation exercises parliamentary oversight over the Government's intelligence activities and evaluates related public policy. It has extensive powers through the use of meetings, hearings, sight of documents and the experience it has gained through its oversight activities.

54. For example, after the attacks of 13 November 2015, the Delegation interviewed, jointly, the Director General of External Security and the Director General of Internal Security.

16. The State party should ensure that the allegations of sexual abuse committed against children in the Central African Republic by French soldiers are effectively investigated as soon as possible and that the perpetrators are brought to justice.

55. The State party should ensure that the allegations of sexual abuse committed against children in the Central African Republic by French soldiers are effectively investigated as soon as possible and that the perpetrators are brought to justice.

56. The French authorities are determined to uncover the truth regarding the serious accusations made against soldiers of the Sangaris forces, in cooperation with the United Nations and the Central African Republic.

57. More specifically, with regard to the legal proceedings, the French authorities referred the case to the courts on 29 July 2014, as soon as they became aware of these serious allegations. The State prosecutor immediately opened a preliminary investigation, and investigators arrived at the scene on 1 August 2014. On 7 May 2015, criminal proceedings were initiated against a person or persons unknown on charges of rape and complicity in rape of minors by a person abusing the authority of his or her position. The judge responsible for the inquiry travelled to the Central African Republic in July 2015 to hear the victims' testimony and was accompanied by an investigator with specialized training in interviewing child victims.

58. At the same time as the initiation of court proceedings, the Chief of Staff of the Armed Forces undertook a command investigation, which was added to the investigation file.

59. If the facts are proven, exemplary disciplinary sanctions will be imposed in addition to the criminal response, which is entirely the responsibility of the judicial authorities. The President of the Republic is committed to that process.

60. The judicial investigation is under way and is subject to the secrecy of inquiry proceedings.

61. The children who reported the incidents were placed under the protection of the United Nations Children's Fund (UNICEF). Additional protection for these children was therefore considered neither necessary nor appropriate, particularly given that the soldiers who were allegedly involved in the abuse are no longer in the Central African Republic.

62. Additionally, the State prosecutor was notified by the Ministry of Defence on 4 September 2015 of a case of alleged sexual abuse of a girl from the Central African Republic by a French solider participating in Operation Sangaris. The investigation into these allegations is ongoing. UNICEF is providing the girl with psychosocial care and legal assistance.

63. Lastly, the French authorities have again initiated judicial proceedings following the recent reports by the Office of the United Nations High Commissioner for Human Rights in January and March 2016. On 1 April 2016, a preliminary investigation into sexual assault was opened by the Paris public prosecutor's office and entrusted to the command of the Gendarmerie prévôtale (military police).

64. With regard to the prevention of further offences, France attaches particular importance to training its soldiers. All French soldiers involved in peacekeeping operations receive specific training on the legal framework, code of conduct, rules of engagement, respect for human rights and criminal responsibility. This training includes a specific module emphasizing standards of integrity, accountability for superiors and zero tolerance for sexual exploitation and abuse. Soldiers are regularly reminded of these rules, which are strictly enforced.

65. Before arriving in a crisis-hit State, French forces are trained in, and made aware of, their duties as military personnel. They are also regularly reminded of these duties during the operation. Operational legal advisers deployed within the armed forces receive further specific training in international human rights law, international humanitarian law and international criminal law so that they may pass on that knowledge to each force member, both before and during deployment. This training, at both the initial and advanced levels, is recognized on successful completion of an examination.

66. Lastly, France is implementing several procedures to ensure that soldiers with criminal convictions or who have received disciplinary sanctions are not deployed on operations, including peacekeeping operations. Those measures include verifying their criminal records before recruitment and as part of administrative inquiries prior to any assignment.